

In re Application Of:

W. P. O'Donnell;

P. B. Aspengren

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### **REMARKS**

Responding to a January 31, 2005 Office Action, and by the present response, the specification along with pending Claims 2, 6, 7, 9, 13 through 15, 17 through 20, 25 and 26 have been amended, Claims 1, 4, 5, 8, 11, 12, 16, 24 and 31 through 34 have been canceled, while Claims 35 through 45 have been added. No new matter has been added and no additional Filing Fee is required. The allowability of pending Claims 6, 7, 13 through 15, and 26 through 30 has been noted from the January 31, 2005 Office Action. Entry of this Amendment into the record along with reconsideration of this patent application is respectfully requested.

Applicant's attorneys gratefully acknowledge the courtesies extending during a March 9, 2005 personal interview with Examiner M. Le. During that interview, amendments to Claims 6, 13 26, along with new 40 and 43 were discussed. The differences between the present invention and U.S. Patent No. 5,086,707 to C. P. Spencer, *et al.* were also discussed during the interview with Examiner Le.

The present invention relates to a side bearing assembly adapted to be arranged in combination with an upper surface of a railcar bolster. Basically, the side bearing assembly includes a body member having wall structure defining a recess wherein a spring is accommodated. The body member is configured to fit within an open top walled receptacle fixed on or affixable to the upper surface of the railcar bolster. The side bearing assembly also includes a friction member

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overlying one end of and for transmitting loads imparted to the spring. The side bearing assembly friction member is separate from and moves relative to the side bearing assembly body member. In a preferred form, vertical movements of the side bearing assembly friction member are guided by and relative to the side bearing assembly body member. An apparatus is provided for securing the body member of and positioning the side bearing assembly within the walled receptacle and relative to upper surface of the railcar bolster.

In one form, the body member and walled receptacle on the upper surface of the railcar bolster include a pair of confronting surfaces disposed to opposed sides of an axis of the side bearing assembly. Accordingly, the apparatus for securing the body member of and positioning the side bearing assembly within the walled receptacle and relative to upper surface of the railcar bolster includes an insert positionable between each pair of confronting surfaces on opposed sides of the side bearing assembly axis.

Applicant respectfully submits, the U.S. Patent No. 5,086,707 to C. P. Spencer, *et al.* disclosure fails to either anticipate or make obvious the invention defined in the claims presented for consideration. As discussed with Examiner Le at the March 9, 2005 interview, and unlike the claims presented for consideration, the '707 Spencer, *et al.* reference fails to disclose or factually suggest a side bearing assembly including a walled body member configured to fit within an open top receptacle fixed on or affixable to the upper surface of the railcar bolster. In fact, an open top

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receptacle for accommodating a side bearing and which is fixed on or affixable to the upper surface of the railcar bolster is nowhere disclosed in the '707 Spencer, *et al.* reference. **IF** the housing of the '707 Spencer, *et al.* device, extending from the bolster were construed as an open top receptacle (although such interpretation would appear inconsonate with the '707 Spencer, *et al.* disclosure), Applicant respectfully submits the '707 Spencer, *et al.* device would then fail to include a side bearing assembly having both a body member and a friction member movable relative to such body member. As such, there can be no anticipation of the present invention. Moreover, and absent such structure, there is no impetus within the four corners of the '707 Spencer, *et al.* reference to suggest to a skilled artisan to somehow modify the '707 Spencer, *et al.* device in a manner obviating the claims presented for consideration.

Furthermore, and in contrast to the claims presented for consideration, the '707 Spencer, *et al.* device includes spacers, movable relative to and for maintaining space between a base and a cap of a side bearing. It is important to note, and in contrast to the claims presented for consideration, nowhere within the four corners of the '707 Spencer, *et al.* disclosure is there any factual disclosure or suggestion how such spacers could be used to inhibit shifting movements of the body member of the side bearing assembly relative to the railcar bolster. Unlike the claims presented for consideration, and especially since the spacers of the '707 Spencer, *et al.* device move with the cap and base of the side bearing, nowhere within the four corners of the '707

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Spencer, *et al.* disclosure is there any factual disclosure or suggestion how such spacers could be used to locate the side bearing assembly relative to the railcar bolster. For these and other reasons, Applicant respectfully submits the claims presented for reconsideration are neither anticipated nor made obvious by U.S. Patent No. 5,086,707 to C. P. Spencer, *et al.*

U.S. Patent No. 3,707,927 to R. P. Geyer, *et al.* was relied upon in the January 31, 2005 Office Action to reject some of the pending claims. For many of the same reasons discussed above with respect to the '707 Spencer, *et al.* device, Applicant respectfully submits the disclosure in the '927 Geyer, *et al.* reference fails to either anticipate or make obvious those claims now presented for consideration and entry into the record.

It is important to note, the open top receptacle attached or fixable to the railcar bolster defines a pocket or recess of only limited size. Moreover, it should be appreciated, the side bearing assembly for a railcar is specifically designed and configured to absorb a significant amount of energy after being installed in combination with the railcar. More specifically, and after installation on the railcar, the spring associated with a constant contact side bearing assembly is designed and configured to both absorb a significant amount of energy and to resiliently return to a position whereby causing a friction engaging surface of the side bearing cap to engage the underside of the railcar body with sufficient force to inhibit "hunting" movements of the wheeled truck to which the railcar bolster is connected. Of course, designing a spring capable of

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performing under the criteria required of a constant contact railcar side bearing assembly has significant challenges associated therewith. In this instance, however, where the side bearing assembly is specifically designed to be accommodated within an open top receptacle on the railcar bolster, the size of the recess or pocket defined by such receptacle severely restricts the design and/or size of spring used in operable combination with the side bearing assembly.

Like the '707 Spencer, *et al.* reference discussed above, the '927 Geyer, *et al.* reference neither discloses nor factually suggests a walled receptacle associated with the railcar bolster for accommodating the side bearing assembly. Alternatively, the '927 Geyer, *et al.* device discloses a side bearing assembly with a housing having an apertured flange extending from opposed sides thereof. The flanges projecting horizontally from the sides of the side bearing housing allow fasteners to pass therethrough. As will be appreciated, however, the horizontally extending flanges must extend laterally outward a sufficient distance from the sides of the side bearing housing such that the head portion of each fastener can engage with the upper surface of the horizontal flange so as to secure the side bearing housing to the railcar bolster.

Although Applicant's respectfully disagrees one skilled in the art would utilize the '927 Geyer, *et al.* design in combination with a side bearing assembly adapted to fit within a walled receptacle on an upper surface of a railcar bolster, IF (as proposed in the January 31, 2005 Office Action) the '927 Geyer, *et al.* device were proposed for use in combination with a side bearing

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assembly, the inappropriateness of such suggestion would quickly become apparent. That is, given such a scenario, and since the flanges extending outwardly from the side bearing assembly housing would be required to fit within the pocket defined by the walled receptacle (albeit not shown '927 Geyer, *et al.* reference), a side bearing assembly incorporating such a housing design would furthermore restrict and reduce the already limited space constraints defined by the pocket of the walled receptacle on the railcar bolster to such an extent that the spring size could not absorb the significant loads imparted thereto and the side bearing assembly would most likely fail to operate in the manner intended therefor or required thereby. Accordingly, Applicant respectfully submits a side bearing assembly design similar to that disclosed in the '927 Geyer, *et al.* reference would not likely be used where the side bearing assembly is to be arranged in operable combination with a walled receptacle defining an open top recess or pocket on a railcar bolster.

Because the '927 Geyer, *et al.* reference fails to disclose or factually suggest a side bearing assembly including base and a cap which are accommodated within and open top receptacle on a railcar bolster, the '927 Geyer, *et al.* device is not presented with the same problems with which this Applicant was concerned and solved. That is, since the '927 Geyer, *et al.* device fails to disclose or factually suggest an open top receptacle into which the side bearing base is to be secured and relative to which the side bearing is to be positively positioned, the '927 Geyer, *et al.* device did not have the same spacial constraints that are present with the side

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bearing assembly of the present invention.

The differences between the present invention and the '927 Geyer, *et al.* device are necessitated by the structural differences between the present invention and the '927 Geyer, *et al.* device. As mentioned above, the '927 Geyer, *et al.* device does not include a open top walled receptacle. Thus, the '927 Geyer, *et al.* device can utilize a conventional flange and fastener arrangement since spacial constraints do not limit the possibilities for securing the side bearing housing and positive positioning of the side bearing assembly relative to the walled receptacle. In the present invention, space is limited and is a serious concern. To address this concern, Applicant designed a side bearing assembly with an apparatus insertable into the open top receptacle for positively securing the side bearing assembly housing and positioning said side bearing assembly relative to the railcar bolster. The '927 Geyer, *et al.* reference is silent of the problem and is void of similar structure. In one form of the invention, Applicant utilizes an apparatus operably engagable with the walled receptacle on the bolster and said body member for locating the side bearing assembly relative to said bolster, with such apparatus including an insert positionable between a pair of confronting surfaces on opposed sides of the side bearing assembly axis for inhibiting shifting movements of the body member of and locating said side bearing assembly from shifting relative to the bolster. Again, the '927 Geyer, *et al.* reference is silent of the problem and is void of similar structure. For his wit and ingenuity, this Applicant is entitled to

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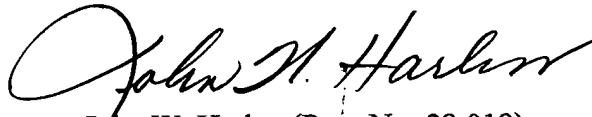
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a patent. Reconsideration and removal of the rejection of the present invention under 35 U.S.C. §102 over U.S. Patent No. 3,707,927 to R. P. Geyer, *et al.* Is respectfully requested.

Claim 6 along with Claims 2, 3, 7 and 35 which add definition, directly or indirectly, to Claim 6; Claim 13 along with Claims 9, 10, 14, 15, 36 and 37 which add definition, directly or indirectly, to Claim 13; Claim 26 along with Claims 17 through 23, 25, 27 through 30, 38 and 39 which further define, directly or indirectly, Claim 26; and new Claims 40 through 45 are all in condition for allowance. A favorable consideration of this application and early passing of this patent application to issuance is respectfully solicited. Should the patent Examiner desire to speak with Applicants' attorneys, they may be reached at the number indicated below.

Respectfully submitted;



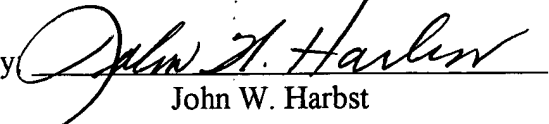
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**CERTIFICATE OF MAILING**

I hereby certify this AMENDMENT "A" are being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents; P.O. Box 1450; Alexandria, Virginia 22313-1450 on the date indicated below.

Date: March 28, 2005

By   
John W. Harbst